IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 8 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
MUKUNDBHAI SAKALCHAND SHAH & 2 - Respondent(s)

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Appearance :
Mr. IM Pandya,Addl..PUBLIC PROSECUTOR for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.
MR SV RAJU for Respondent(s) : 1, 3,
MR KV SHELAT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2007
ORAL JUDGMENT

By way of this Criminal Revision Application, the applicant State of Gujarat has prayed for an appropriate order to quash and set

aside the order passed by learned Metropolitan Magistrate, Court No.8 Ahmedabad dated 8.5.1997 in Criminal Misc. Application No. 2 of 1991 by which the learned Magistrate has ordered to hand over the muddamal oil tins (36 in Nos.) to the accused No.3 on condition that it should be sold by the accused No.3 as non-edible oil.

2. Shri Pandya, learned APP has submitted that when in fact the oil was found to have been adulterated and accused persons were acquitted on technical grounds the learned Magistrate ought to have passed an order to destroy the oil tins and the oil rather than handing over and/or giving custody of the same to the accused No.3 and therefore it is requested to allow the present application. On the other hand while opposing the present application, the learned advocate appearing on behalf of the respondents No. 2 and 3 has submitted that when the learned Metropolitan Magistrate has exercised the discretion in favour of accused No.3 the same is

not required to be interfered with in exercise of revisional powers under Section 397 of the Criminal Procedure Code.

3. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that all the 36 tins of groundnut oil were found to have been adulterated and all the accused persons came to be acquitted on technical ground and in that view of the matter rather than handing over possession of the aforesaid 36 tins of groundnut oil to the original-accused No.3 the learned Magistrate ought to have passed the order to destroy the same. Under the circumstances, the impugned order passed by the revisional Court in handing over possession of the 36 tins of groundnut oil which were in fact found to have been adulterated even on the conditions as stated in the order is perverse and illegal which requires to be quashed and set aside in exercise of the revisional powers under Section 397 of the Code of Criminal Procedure. In the result, the

revision application succeeds. The interim order passed by the learned Metropolitan Magistrate, Court No.8, Ahmedabad, dated 8.5.1997 in Criminal Misc. Application No. 2 of 1991 is hereby quashed and set aside. Rule is made absolute accordingly.

[M.R. Shah, J.]

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